

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING
FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY
CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-01125(0)

REGULATORY PROJECT MANAGER: Mark E. Gronceski **Date:** May 3, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** N **Date:**

At the project site (Y/N) Y **Date:**

PROJECT LOCATION INFORMATION:

State: Ohio OH

County: Summit Summit

Center coordinates of site by latitude & longitude coordinates: 41-18-29;81-28-24

Approximate size of site/property (including uplands) in acres 26

Name of waterway or watershed: Cuyahoga River

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands		X							
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			X		
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

- 1) The site is wooded. There are seven wetlands on-site totalling 4.39 acres of which four are isolated (1.69 acres in total, 1.33, 0.22, 0.12, and 0.02 acres individually, all entirely on-site). It is unknown what impacts are being considered.
- 2) The four wetlands classified as isolated have no hydrologic connection to waters of the United States and no apparent interstate commerce nexus.
- 3) There are 2.70 acres of federally regulated waters on the site.

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CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-00508(0)

REGULATORY PROJECT MANAGER: Pauline D. Thorndike **Date:** May 5, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date: March 29, 2004**

At the project site (Y/N) **Y** **Date: March 8, 2004**

PROJECT LOCATION INFORMATION:

State: OH

County: Cuyahoga

Center coordinates of site by latitude & longitude coordinates: 41-19-51.2760, 81-46-46.5960

Approximate size of site/property (including uplands) in acres: 25 acres

Name of waterway or watershed: unnamed wetlands

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	x								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			x		
Is or would be used as habitat by other migratory birds that cross state lines?			x		
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?				x	

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TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine

NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite): The Regulator was requested to determine if the wetlands on the property are jurisdictional. Based on a field determination and a review of in-office resources, the regulator determined that there were 9 wetlands on the property totaling 1.278 acres. Of these, 6 wetlands (0.308 acre) were determined to be isolated linear wetlands and contained on-site. The Regulator determined that the 6 wetlands are not connected via surface water to any other waters of the U.S., and that the wetlands are intra-state, isolated, and nonnavigable. The Regulator was not able to determine a nexus to interstate commerce. Based on the information provided to the Regulator, neither of the isolated wetlands will be filled during construction of the proposed project.

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DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-00211(0)

REGULATORY PROJECT MANAGER: Paul F. Wetzel **Date:** May 14, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y

At the project site (Y/N) Y **Date:** November 17, 2003

PROJECT LOCATION INFORMATION:

State: OH

County: Fulton

Center coordinates of site by latitude & longitude coordinates: lat.- 41-34-49.5120; long.- 83-53-18.5640

Approximate size of site/property (including uplands) in acres: 18.2

Name of waterway or watershed: unnamed tributary of Swan Creek

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			x		
Is or would be used as habitat by other migratory birds that cross state lines?					x
Is or would be used as habitat for endangered species?					x
Is used to irrigate crops sold in interstate commerce?		x			

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TYPE OF DETERMINATION: Preliminary Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine

NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

The Corps was requested to determine if the wetlands on the 18.2 acre parcel are jurisdictional. A total of 0.5 acres of isolated wetlands (Wetlands B, C, D, and E) were delineated on the subject project site. In addition to this, 0.09 acres of jurisdictional wetlands (Wetland A) were delineated adjacent to an unnamed tributary located on the southeast corner of the property. The remainder of the property was either upland woods or prior converted (PC) cropland.

The delineated wetlands B, C, D and E are isolated depressional wetlands that have no apparent surface water connections to any tributaries of navigable waters. There are no tributaries or drainage ditches present either in the agricultural fields or in the vicinity of the mapped wetlands except for Wetland A. There is no apparent nexus to interstate commerce.

No migratory birds were detected in any of the wetlands. However, it is conceivable that they would be frequented by birds in migration foraging and/or resting.

Wetland A is adjacent to the unnamed tributary of Swan Creek. It is also located within the 100-year floodplain of the stream. The unnamed tributary is a surface tributary to a navigable water and is jurisdictional as well.

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DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-00362(0)

REGULATORY PROJECT MANAGER: Mark E. Gronceski **Date:** May 14, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:**

At the project site (Y/N) Y **Date:** March 25, 2004

PROJECT LOCATION INFORMATION:

State: Ohio OH

County: Portage Portage

Center coordinates of site by latitude & longitude coordinates: 41.3378;81.3708

Approximate size of site/property (including uplands) in acres 66

Name of waterway or watershed: Aurora Pond

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			X		
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?					X
Is used to irrigate crops sold in interstate commerce?				X	

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TYPE OF DETERMINATION: Preliminary Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD

1. The site is a mixture of successional woods, upland old fields, scrub thickets, and wetlands, including 5 isolated wetlands totalling approximately 0.158 acres in size. All isolated wetlands are proposed to be entirely filled during site development.
2. The five isolated wetlands are entirely surrounded by uplands and have no hydrologic or interstate commerce relation to waters of the United States.
3. The site also contains 8 wetlands which are waters of the United States totalling 0.848 acres.

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DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2003-02282(0)

REGULATORY PROJECT MANAGER: Claudia R. Steele **Date:** May 18, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** 05/18/2004

At the project site (Y/N) Y **Date:** 10/15/2003

PROJECT LOCATION INFORMATION:

State: OH

County: Lake

Center coordinates of site by latitude & longitude coordinates: 41.64447
81.24140

Approximate size of site/property (including uplands) in acres: 12

Name of waterway or watershed: Ellison Creek

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?		X			

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TYPE OF DETERMINATION: Preliminary Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring on-site):

The 12 acre parcel is located off of State Route 44, Concord Township, Lake County, Ohio. The site contains 3 wetlands totaling 0.15 acre of wetland and 135 linear feet of Ellison Creek and an unnamed tributary of Ellison Creek.

To determine the extend of federal jurisdiction, an on-site investigation and an office resource evaluation were conducted. The office resource evaluation was based on the review of USGS topographical maps, the Lake County Soil Survey, National Wetlands Inventory maps, and historical aerial photographs.

Wetland 1 (0.05 acre) is an isolated, non-navigable, intrastate water and has no surface water connection to Ellison Creek or the unnamed tributary of Ellison Creek and is located approximately 200 linear feet from the nearest stream. In addition, no other interstate commerce factors were documented. Wetland 1 extends outside of property boundaries by approximately 0.02 acre. The applicant has indicated that none of the isolated wetland will be impacted as a result of the proposed bike path.

Wetlands 2 (0.07 acre) and 3 (0.03 acre) are federally jurisdictional as they are directly connected to either Ellison Creek or an unnamed tributary of Ellison Creek. Ellison Creek flows into the Grand River, which flows into Lake Erie. Wetlands 2 and 3 both extend outside of project boundaries.

Other waters of the U.S. do occur on the property including two streams that lead to the Grand River. 75 linear feet of an unnamed ephemeral stream and 60 linear feet of Ellison Creek are located within property boundaries, however, both streams continue outside property boundaries.